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Attorneys for Plaintiff
NICHOLAS BART ELLIS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

NICHOLAS BART ELLIS,

Plaintiff,

vs.

A. NAVARRO, et al.,

Defendants.

No. C 07-5126 SBA (pr)

**STIPULATION AND [PROPOSED]
ORDER MODIFYING DATES IN
ORDER FOR PRETRIAL
PREPARATION**

Courtroom: 1

Judge: Hon. Sandra Brown Armstrong

Plaintiff Nicholas Bart Ellis and Defendants A. Navarro, F. Juarez and B. Gardner
(collectively, the “Parties”)¹ hereby stipulate as follows:

STIPULATION

WHEREAS the Parties have met and conferred regarding the schedule set in the
Court’s Order for Pretrial Preparation (“Order,” Dkt. 49);

WHEREAS the parties are currently engaged in discovery;

WHEREAS litigation of this action requires extensive planning and preparation that
a typical case does not entail, to wit:

- Plaintiff is incarcerated in the Security Housing Unit of Pelican Bay State
Prison (“Pelican Bay”), known as the state prison with the highest-level of
security in California;
- Because of Pelican Bay’s security restrictions and policies and practices
concerning attorney-client telephone calls (see Dkts. 42-47), it is difficult for
Plaintiff’s counsel, who were appointed by the Court to represent him, to
consult with Plaintiff regularly or for any significant length of time
(although the Parties’ counsel and Pelican Bay are working through these
issues);
- Pelican Bay is located in Crescent City, California, 363 miles north of the
San Francisco Bay Area, where the Parties’ counsel live and work;
- Most of the witnesses in the case work and live near Pelican Bay;
- Because of its remote location and security restrictions at the prison, travel
to or from Pelican Bay takes approximately a full business day, and because
of coastal weather conditions, flights are often cancelled or delayed;
- Document discovery requires the cooperation and assistance of the staff of
Pelican Bay and the California Department of Corrections and

¹ On June 18, 2010, the Parties entered into a Stipulation and [Proposed] Order voluntarily
dismissing Defendant C.E. Wilber pursuant to Federal Rule of Civil Procedure
41(a)(1)(A). Dkt. 34.

Rehabilitation, both of which are significantly under-staffed as a result of state budget constraints;

WHEREAS there are numerous fact witnesses who will need to be deposed in the case, including the Parties themselves, other witnesses to the incidents at issue, possibly medical personnel who treated Plaintiff, Pelican Bay and CDC officials who processed Plaintiff's administrative appeal (relevant to the exhaustion issues in the case), as well as expert witnesses;

WHEREAS Plaintiff's counsel need to travel to Pelican Bay on a separate trip in advance of fact depositions in order to inspect and videotape various locations at Pelican Bay where the incidents took place;

WHEREAS the Parties have agreed not to bring further dispositive motions (including any motions for summary judgment), but nevertheless require additional time to conduct fact and expert witness discovery;

WHEREAS the Parties agree to the extension of dates set in the Order to allow sufficient time for discovery and trial preparation;

WHEREAS the Parties have not sought any other extensions of the dates set in the Order;

NOW, THEREFORE, the Parties, through their undersigned counsel, stipulate and request that the Court order that the pretrial dates set forth in the Order be modified as follows:

Event	Date, per Order for Pretrial Preparation, Dkt. 49	[Proposed] Revised Dates
Fact Discovery Cut-Off	September 30, 2011	December 2, 2011
Expert Designation	Plaintiff: September 30, 2011 Defendant: September 30, 2011 Rebuttal: October 14, 2011	November 18, 2011 November 18, 2011 December 2, 2012
Expert Discovery Cut-Off	December 19, 2011	February 3, 2012

Event	Date, per Order for Pretrial Preparation, Dkt. 49	[Proposed] Revised Dates
Motion Cut-Off	November 15, 2011, 1pm	None needed – No further dispositive motions will be filed.
Mandatory Settlement Conference	November 21 to December 19, 2011	November 29, 9:30am (Judge Beeler), see Dkt. 50
Parties to Meet and Confer re Pretrial Preparation	December 10, 2011	January 31, 2012
Joint Pretrial Statement; Trial Briefs; Witness Lists; Designation of Discovery Excerpts; Proposed Jury Instructions, Voir Dire and Verdict Forms; Exhibits Due	December 13, 2011	February 7, 2012
Motions in Limine and Objections to Evidence Due	December 20, 2011	February 14, 2012
Oppositions to Motions in Limine and Objections to Evidence Due	December 27, 2011	February 21, 2012
Replies to Motions in Limine and Objections to Evidence Due	January 3, 2012	February 28, 2012
Pretrial Conference	January 10, 2012, 1pm	March 6, 2012, 1pm
Trial begins	January 18, 2012, 8:30am	March 14, 2012, 8:30am

All other terms of the Order will remain the same.

Dated: August 5, 2011

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By /s/ Marc H. Axelbaum
 Marc H. Axelbaum

Attorneys for Plaintiff NICHOLAS BART ELLIS

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By /s/ Matthew Roman
Matthew Roman

7 Attorneys for Defendants
8 SERGEANT A. NAVARRO;
9 CORRECTIONAL OFFICER F. JUAREZ
10 CORRECTIONAL OFFICER B. GARDNER; AND
11 APPEALS COORDINATOR C.E. WILBER

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DECLARATION PURSUANT TO GENERAL ORDER 45, § X.B

I, Marc H. Axelbaum, hereby declare pursuant to General Order 45, § X.B, that I
have obtained the concurrence in the filing of this document from the signatory listed
above.

I declare under penalty of perjury that the foregoing declaration is true and correct.

Executed on August 5, 2011, at San Francisco, California.

By /s/ Marc H. Axelbaum
Marc H. Axelbaum

Attorney for Plaintiff NICHOLAS BART ELLIS

[PROPOSED] ORDER


Pursuant to the parties' stipulation, the Court's pretrial scheduling order is MODIFIED
AS FOLLOWS:

Event	Date, per Order for Pretrial Preparation, Dkt. 49	[Proposed] Revised Dates
Fact Discovery Cut-Off	September 30, 2011	December 2, 2011
Expert Designation	Plaintiff: September 30, 2011 Defendant: September 30, 2011 Rebuttal: October 14, 2011	November 18, 2011 November 18, 2011 December 2, 2012
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Replies to Motions in Limine and Objections to Evidence Due	January 3, 2012	February 28, 2012
Pretrial Conference	January 10, 2012, 1pm	March 6, 2012, 1pm
Trial begins (10-day jury trial)	January 18, 2012, 8:30am	March 14, 2012, 8:30am March 12, 2012 at 8:30am

1 All other terms of the pretrial scheduling order will remain the same.

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3 **IT IS SO ORDERED.**

4 September 15, 2011

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6 The Hon. Sandra Brown Armstrong
7 United States District Judge
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